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THE RESULTS OF THE TWO HAGUE CONFERENCES AND THE DEMANDS UPON THE THIRD CONFERENCE

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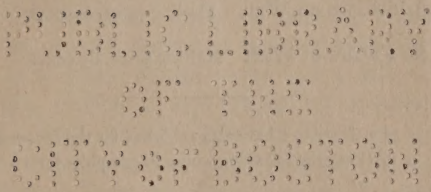
BY

EDWIN D. MEAD



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Edited by EDWIN D. MEAD

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THE RESULTS OF THE TWO HAGUE CONFERENCES AND THE DEMANDS UPON THE THIRD CONFERENCE.*

By Edwin D. Mead.

We are facing the Third Hague Conference. We already feel it impending. At farthest it is only five years ahead of us; and the creation of the committee to lay out its program is only three years ahead. If the Conference meets, as it should, in 1914 instead of 1915, the determining of its program is only two years ahead. The question therefore as to our present problems and duties with reference to the Third Conference in view of the results of the two preceding Conferences is a very practical question, and one of immediate concern.

Where do we stand? What were the results of the first two Conferences? It is well here to sum them up, as we ask ourselves what they demand of the nations facing to-day the Third Conference. There is nothing commoner than to read in the newspapers and hear it said by the man in the street that those results were not great. The Philistine generally mocks at the Hague Conferences and runs them down. That is because he is a Philistine and ignorant. The man who knows history and politics knows that never in human history have there been any other definite achievements in behalf of the peace and order of the world comparable with the achievements of the two Hague Conferences. We are living in a different world because those two Conferences have met and because, by reason of them, a third Conference is going to meet, and then a fourth and a fifth and a fiftieth. Secretary Root said upon the eve of the Second Hague Conference that "the most valuable result

* Address at the New England Peace Congress at Hartford, Conn., May 11, 1910.

of the Conference of 1899 was that it made the work of the Conference of 1907 possible." So we may say that the most valuable result of the Second Conference was that it made the Third Conference certain. When the First Conference adjourned, it made no provision for a second; but, when the Second Conference adjourned, it decreed the Third in its convention. This means the regular assembly of these Conferences in the future. They are the beginnings of an International Parliament, the Parliament of Man; and in the lifetime of many here present the International Parliament, composed of the representatives of all nations, will meet as regularly and automatically to confer upon the mutual needs of the nations as our national Congress meets at Washington to confer upon the mutual needs of our states, or the British Parliament meets at Westminster to confer upon the needs of the constituent parts of the empire. I think that those of us with boldest imagination hardly realize how much this means. It means that a new era has come, and that this is already another world.

It is fair to suppose that this Peace Congress is more conversant than almost any body of equal size which could be brought together with the achievements of the two Hague Conferences; yet I have no doubt that there are many here who could profitably refresh their memories by reading the summary of those achievements in such works as Professor Hull's little book on "The Two Hague Conferences," or the pamphlets upon the results of the Second Hague Conference by Baron D'Estournelles de Constant, Hon. David Jayne Hill, and James Brown Scott.* If any of you have not read any of these writings, then do it, because it is only as we know the history that we can deal intelligently with the duty which confronts us.

The greatest servant that our cause ever had was Hugo Grotius. Andrew D. White has well said that no book not claiming divine inspiration ever conferred such benefit upon mankind as Grotius's great work upon "The Rights

*These pamphlets can be had for the asking from the Association for International Conciliation. Professor Hull's book is published by the International School of Peace.

of War and Peace." With that book the science of international law was fully born; and it is hardly too much to say that it was born full grown. With what does that great book concern itself? Primarily with two things: the amelioration of the cruel usages of war, and the promotion of arbitration and the better organization of the family of nations. It is in the same two fields that the two Hague Conferences have achieved their great results. It was a famous saying of antiquity that "in the midst of war laws are silent." It was to establish a different principle from that in the world that, for one thing, Grotius wrote. "It is very usual," he says in the introduction to his "Rights of War and Peace," "to put *rights* and *arms* in opposition to each other. Ennius says: 'They have recourse to arms, and not to rights'; and one poet introduces a warrior who, when he enters on war, says: 'Now, Peace and Law, I bid you both farewell.' Antigonus laughed at a man who, when he was besieging his enemies' cities, brought to him a dissertation on Justice; and Pompey, who was so modest that he blushed when he had to speak in public, had the face to say, 'Am I who am in arms to think of the laws?'" The contention of Grotius was that in the midst of war men must think of the laws, and there must be laws for them to think of, that the laws, so far from being silent, shall speak and shall be heard; and he devoted one entire book in his great work to the subject of what is lawful in war. It was a crushing arraignment of the cruel and barbarous usages which prevailed in his own time; for the time when he wrote was the time of the Thirty Years' War. The result of his powerful arraignment appears in the great reforms in the usages of war which began almost with the publication of his book. One of our own great soldiers truly said that "war is hell." But there are degrees even in hell; and the hell of war before Grotius wrote, when non-combatants, women, children, conquered cities, had no rights at all, and the hell of war after he wrote are hells of a very different order. From that time to this the hell of war has gone on improving; and never were so great improvements made as by the two Hague Conferences. Pro-

fessor de Martens, perhaps the greatest international lawyer in the First Conference, said of its code of sixty articles restricting the cruelties of war, that it was as notable an achievement as the arbitration convention framed by the same Conference; and M. Nelidow, the president of the Second Conference, pronounced the code of maritime law established by that Conference even more important than all which the Conference did for the cause of arbitration. As to that matter, men's judgments will differ; but as to the absolute importance of those achievements the judgments of wise men cannot differ. The importance of what was done by the two Hague Conferences touching the rights and duties of neutrals, the prohibition of the bombardment of undefended towns, the prohibition until the time at least of the next Conference, when it should be made perpetual, of the discharge of projectiles from balloons, the provision that in the future a formal declaration of war with a public statement of its causes must always precede hostilities,—these are a few of the many reforms introduced into the usages of war by the two Hague Conferences. But how much they mean; what an advance they register!

These, however, to my thinking, count but little as compared with the great advances made by the Hague Conferences in international law and legal machinery, in the founding of an Arbitration Tribunal and of International Courts, in the immense impetus which the creation of such institutions has given to the multiplication of arbitration treaties, and in the various potent provisions for hindering or preventing wars altogether. Consider simply the important results, almost immediate, which came from the provision by the First Hague Conference for commissions of inquiry and for the good offices and mediation of nations concerning each other. Had the happy solution of the Dogger Bank incident, when the Russian cruisers fired upon the British fishermen, and the fortunate treaty of Portsmouth, stopping the war between Russia and Japan, been the sole outcome of the First Hague Conference,—as both were made possible by two of its fortunate provisions,—these alone

would have been abundant justification of all the labors of that Conference. If the Second Conference had simply adopted the Porter-Drago proposition, making thenceforth illegal the forcible collection of debts by one nation from the people of another unless arbitration is refused, that alone would have been worth to ourselves a hundred times all the cost and labor of the Second Conference. Why, it was the state of things as concerns South America that was removed at one stroke by that international provision which was up to that time the chief excuse for half our navy, and the chief occasion of apprehension of danger in the South American republics. The International Prize Court, whose establishment has come directly from the action of the Second Conference, is the first international court in history. Here again, at one stroke, a whole category of cases was removed at once from national to international jurisdiction. It emphasized with decisive power the truth, which ought long ago to have been clear to every nation as to every man, that no suitor should be allowed to be a judge in his own case; and incidentally it may prove to have pointed the way to the constitution of the International Court of Arbitral Justice, whose judges await appointment, but which court, when two or more nations once do agree upon the judges, will become a true Supreme Court of the World, lifting arbitration and the sundry adjudications of the differences of nations out of the diplomatic into the judicial atmosphere and practice. The arbitration convention of the First Hague Conference, creating among other things the International Arbitration Tribunal, has well been called the Magna Charta of international law. It was only when such machinery for arbitration was provided that it was possible for such agitation for obligatory arbitration and such multiplication of arbitration treaties as we have seen in the last ten years to take place; and that great action of the First Conference was the prophecy and preparation for the provision by the Second Conference for the International Prize Court and the Court of Arbitral Justice. We read of the "fifteen decisive battles of the world." Here

was an event vastly more decisive and a victory more brilliant and more pregnant far than any or all of those.

The two Hague Conferences failures! One is appalled at the depths of the ignorance and Philistinism that venture the wild and mischievous assertion. I confess that, with such knowledge as I have of history and the general course of political action, I can never survey, as I have here rapidly surveyed with you, the prodigious achievements of the two Hague Conferences, with all that is pregnant in them, without being lost in amazement. If the most optimistic of us here had been told in 1898 that these advances would be made in the interval between then and now, none of us would have believed it.

The general results of the Hague Conferences upon the habit and temper of the world have been even more revolutionary and beneficent than the specific results which have here been noticed. I can think of no other proof of the world's political maturity and competence, of its rationality and evolution of good manners, half so great as the decorum, mutual respect, and perfect temper which marked the dealings of the 256 representatives of the forty-four nations in the last Hague Conference, from beginning to end. Think of it, in the light of history,—representatives of every race, religion, language, tradition, system of government, and system of law, conferring upon the most important and critical questions of international relation, with the widest differences of opinion and feeling, with all their various prejudices, with all possible scope for collision,—and no one breach of self-restraint or courtesy, no breach of respect or of brotherhood, on the part of any member of that illustrious convention, during the whole four months! Why, if the Second Hague Conference had done nothing but simply exhibit to the world that spectacle, it would have marked an epoch. But how much more than that it taught the nations! It taught them that from now on legality and co-operation, mutual and deferential conference, instead of national selfishness, impulse or isolation, must rule the world, that the new era of these things has come, and come

to stay. This is the supreme result of the Hague Conferences. Those Conferences were sessions of the world's Constitutional Convention. "On the sky's dome, as on a bell," their action "struck the world's great hour" of unity and organization, pledging the family of nations at once a legislature and a judgment seat, and transforming the world's peace party into a world federation league, instinct and electric with confidence in "holier triumphs yet to come,"—

"The bridal time of Law and Love,
The gladness of the world's release,
When, war-sick, at the feet of Peace,
The hawk shall nestle with the dove!—

"The golden age of brotherhood
Unknown to other rivalries
Than of the mild humanities
And gracious interchange of good."

The League of Peace, for which Mr. Carnegie has been pleading, seems actually at hand. Even Mr. Roosevelt seems coming into line. Only the League of Peace, to be a true solvent and a real blessing, must be coextensive with honest national purpose and genuine civilization.

What demands do the great results of the Hague Conferences make upon the nations? They demand that we shall go on unto perfection. The rapid recital which I have made is no more history than program and commandment. The great evolution of international organization has been begun upon right lines; and the demand of that evolution is further evolution upon the same lines. I have spoken upon the work of the Second Hague Conference towards the establishment of an International Court of Arbitral Justice, and of the fact that everything now necessary to bring that Court into existence and operation is the agreement upon the appointment of judges by two or three nations. Precisely this, as you all know, is what Secretary Knox is trying to bring about at this moment; and he has just informed the country that the response to his effort is most encouraging. It would certainly have been a satisfaction if

all nations, or a majority of them, could have agreed upon some form of appointing the judges for this Court. They did not agree; and, happily, an agreement between two or three of them was all that was absolutely necessary to inaugurate the Court. The thought of so extending the jurisdiction of the judges of the International Prize Court as should practically transform that into a Court of Arbitral Justice or Supreme Court of the World was probably a fortunate thought. At any rate, it offered a solution of a difficult problem; and the first demand upon us at this moment is to back up that effort until it succeeds. I believe it will quickly succeed; and, when the Court is once established, I am quite willing to trust to the various forces of international evolution to make of it all that it ought to be. I am proud and grateful as an American that our own nation has played the leading part in the birth of this institution. Its birth is in obedience to the principle which Secretary Root has iterated and reiterated, that the thing chiefly desired in procedure at The Hague is to minimize the diplomatic side of things and magnify the really judicial side. Secretary Knox took up this matter where Secretary Root left it; and to them, and to Mr. Choate and Dr. Scott, our obligations and the world's in this matter are pre-eminent. The Third Hague Conference will undoubtedly make great advances as to the constitution and procedure of this Court, and as to much touching arbitration altogether. Consider the immense significance in possible contingencies of the single provision by the Second Conference that either of two disputing nations, without agreement with its opponent, may of its own initiative report its willingness to arbitrate to the International Bureau, which shall then inform all the powers, leaving them to perform their duty in the matter. I look for further provisions of this character, and it is for us to demand such provisions, until international law touching the beginning of war is as rational and as effective as Canadian law touching the beginning of strikes and lockouts. When nations once realize that they are amenable to public opinion, when they are

compelled to pay a decent respect to the opinions of mankind by proper publicity and proper delays, the end of war will be in sight; for no man living can remember a war whose inauguration would have been able to abide the world's critical discussion. Consider simply England's recent war in South Africa or our own in the Philippines. Such a war even as the Franco-German war of 1870 would have been impossible if both France and Prussia had been compelled to submit to the world full statements of the grounds of their proposed conflict, and wait a proper period for the world's review and judgment.

The Second Hague Conference recognized unanimously the principle of obligatory arbitration; and it may well be that the Third Conference will work out some formula for a general treaty which, while much broader in scope than the treaty proposed at the Second Conference, shall still command universal assent. Whether so or not, a cardinal demand upon us all, as we face the Third Conference and the establishment of the new International Court, is to work for arbitration treaties of broader scope, unlimited treaties, providing that every difference whatever between nations not settled by diplomatic negotiation shall be referred to The Hague. The reservation from arbitration in most treaties in these late years of questions of so-called "honor" and "vital interest" is a mischievous reservation. National integrity, in the nature of the case, is not a subject for arbitration; but there is no possible question covered by these foolish reservations which would not be better arbitrated than fought about,—and there has been no kind of question which has not been successfully arbitrated. It is not necessary to go beyond the survey of our own arbitrations, involving the most important boundary disputes and all the momentous questions of "honor" and "vital interest" in the Alabama case. The foolish reservations serve only as pegs upon which the apologists for big armaments can hang their pleas, and thus perpetuate suspicion and trouble. President Taft never did a greater service than when in New York a few weeks ago he condemned

the reservation from arbitration of so-called questions of honor. There is no honor so great between nations or between men as that of referring their disputes to impartial third parties rather than fight about them. As concerns ourselves, it chances that treaties referring everything to arbitration without reserve were unanimously indorsed by the great Arbitration Conference at Washington in 1904, under the presidency of Hon. John W. Foster, the resolutions to this effect having been drawn by a committee of which Hon. George Gray was the chairman. It accuses us that we have let this matter drop. Let us now revive it, and keep agitating it until we have treaties of the right sort referring all differences to a court of the right sort. I am glad to report in this New England Congress that a resolution urging action to this end has just been passed by the Legislature of Massachusetts, which has so frequently in the past adopted resolutions prophetic of provisions to which the larger world has come later.

Two other principles were indorsed in resolutions passed by the Massachusetts Legislature at its present session, which should be regarded as demands upon the attention of the Third Hague Conference. One condemns all wars of conquest, as Brazil now condemns and forbids such wars in her constitution, and as the recent Berlin treaty between the nations bordering on the North Sea condemns them by implication. This Massachusetts resolution, urging our government to unite with other governments in action upon the matter, has already found strong indorsement in many other States. The Third Hague Conference should write this prohibition into international law. It should also take some large action along the lines of our other Massachusetts resolution, looking to the positive provision by the nations at cost for mutual activities promoting good understanding and co-operation. It is high time we heard more of "peace budgets," and not simply of "war budgets." When the nations once realize that it is cheaper and more efficacious to spend money in preparing for peace than in preparing for war, this will rapidly become at once a safer and more

respectable world; and the right time for decisive agitation to that end is the time between now and the Third Hague Conference.

The two most trying problems that the Third Hague Conference will confront are those of the inviolability of ocean commerce in war and the limitation of armaments. Somehow the Conference must deal with these problems. It is because the man in the street believes that the first two Conferences shirked their duty concerning the latter problem that he has called those Conferences failures; for to the common people the one great problem is the awful problem of the monstrous armaments which impose such intolerable burdens upon the people and fill the world with danger and alarm. The plain man pays little heed to our eloquence about arbitration treaties and arbitration courts, so long as the governments go on increasing the terrible machinery of war vastly faster than they increase the machinery of justice; for he says that, if they obeyed their own logic and the spirit of the Hague conventions, to which they have made themselves parties, the decrease of the machinery of force should keep even pace with the increase of the machinery of law. With whatever reservations, the common people are profoundly right in this judgment; and it will be the duty of the Third Hague Conference to grapple in some strong and serious way with this anomalous situation. The man in the street, the man who does not know history, was too impatient in his early demands. It was impossible that the disarmament of the nations should come before the Court of the Nations. The war system could not disappear until the law system was ready to take its place; and the nations will not fully commit themselves to the law system until by sufficiently long and successful operation this has approved itself. The actual increase of war machinery, however, alongside the great development of law machinery is a paradox and a crime, and the plain people are right in their feeling that it impeaches the good faith of the nations. This question is now a great moral question. The one word of real consequence in Mr. Roose-

velt's recent Nobel address at Christiania was this: "Granted sincerity of purpose, the great powers of the world should find no insurmountable difficulty in reaching an agreement which would put an end to the present costly and growing extravagance of expenditure on naval armaments." This is what the plain people of the nations have long seen clearly and felt deeply, and this is the ground of their impatience. They have been in advance of most of the statesmen, and they distrust the sincerity and serious purpose of governments. The hour has struck for seriousness and resolution and action in this matter. It is, I repeat, a moral question. The arguments for the great armaments, especially for the great navies, which are now vastly more a danger than a defence, are not respectable arguments. We need not bother ourselves here about other people. We have only to pass judgment upon the pleas and apologies for our own inordinate navy from some of our own congressmen and other officials. It would surely be hard to conceive of anything worse than the jingoism and hucksterism of the recent speech of our Secretary of the Navy at Philadelphia, urging a bigger navy to prevent our being "trodden upon" by other nations, and to make more business for the Steel Trust!

The recent and almost chronic strain between Great Britain and Germany, insane in many respects as it is, is the *reductio ad absurdum* of the foolish argument that the way to insure peace is to create such monstrous armaments as shall make nations afraid to attack each other. Every new German or British *Dreadnought*, so far from proving a new bond of peace according to the theory, has proved a new occasion of dread and danger. The Anglo-German situation is also a conclusive argument for the inviolability of ocean commerce in war. There is no remaining usage of war so barbarous as that which violates this. So long as Germany's commerce and commercial ambition grow as they are now growing, so long will her navy grow commensurately, until menace to her merchant marine is removed by international law. This point touches not simply Ger-

many, but every commercial nation. Nothing will do so much to reduce the navies of the world as the international decree of the inviolability of ocean commerce in war. We are glad to remember that this has always been the American position. Germany stood for it with us at the last Hague Conference. If the next Conference solves this problem, it will render a service vastly greater than the Second Conference rendered in the adoption of the Porter-Drago proposition.

Touching the larger question of the limitation of armaments the demand of the American people upon the Third Hague Conference should be the same demand which Secretary Root formulated for us upon the point as we entered the Second Conference,—that our effort in this direction should be persistent and that this persistence should continue until ultimate success is attained. It is fortifying to recur, in closing, to Mr. Root, because there has not been in all the world in this time a wiser international statesman,—and there has been none who has emphasized more impressively the power of public opinion. It is the growing international sentiment of mankind, he has reminded us, which will be and already is the great sanction of international law itself; and at the New York Peace Congress of three years ago he called upon all such bodies as ours to do their utmost for the creation of that energetic moral sentiment which is at once the highest inspiration and the strongest support of governments in their dealings with world affairs. It is with the creation of strong and enlightened public opinion that men and women like ourselves have to do. That is what we are for. That is what this Congress is for. As we approach the Third Hague Conference, let us understand clearly the problems which the Second Conference left to it and to us. Let us formulate clearly to ourselves the things which the Third Conference ought to do. Let us remember that two years before that Conference meets the committee will meet to determine its program, and that therefore there is no time to be lost. Let us insist upon such an organization of the Third Conference, in contrast to the organiza-

tion of the first two Conferences, as shall make it indeed a free and independent Conference. For my own part, I should say let us insist that the Conference meet not later than 1914. An interval of seven years between these Parliaments of Man is, as our critical and crowded history now makes itself, an interval quite long enough; and the accident of a year's waste of time in 1906 should not be allowed to determine the interval in the present case. The United States delegation, in the spirit of Secretary Root's instructions, suggested to the Second Conference the month of June, 1914, as the date of the meeting of the Third Conference; and that is the proper time for it. But, however these things are settled, let the peace party of America be alive. Let it remember that William Ladd and Elihu Burritt, half a century and more before the First Hague Conference, stood clearly and persistently for every cardinal feature of the Hague program, and be inspired by those sacred memories to as prophetic service to-day as theirs of yesterday. Let it remember that the peace movement, as your great Bushnell here in Hartford so impressively pointed out in his prophetic essay on "The Growth of Law," is simply the extension of law beyond the confines of the nation, the largest unit yet fully organized, to the family of nations; and that our own federal republic, our United States, offers in its own beneficent national institutions the most impressive and potent prototype of a united world. This beneficent federation, this eloquent inheritance, are a high imperative and holy call. Let us realize America's great duty and great power; and let us so exert ourselves in the years just before us as to make America's influence in the Third Hague Conference worthy of her own great traditions and a blessing to mankind.